

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0274

For The Period: 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Income Tax: Residence

Authority: IC 6-3-2-1(a); IC 6-3-1-12; 45 IAC 3.1-1-22; IC 6-3.5-1.1-16; IC 6-8.1-10-1(e); IC 6-8.1-5-1(b);

The taxpayer protests the assessment of a County Tax on earnings for 1998.

STATEMENT OF FACTS

Taxpayer was assessed County Tax on her earnings for 1998. Taxpayer contends that she was not a county resident of Indiana for that year and thus should not be subject to the tax. More facts will be provided as needed below.

I. Income Tax: Residence

DISCUSSION

Indiana imposes an adjusted gross income tax upon the adjusted gross income "of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC 6-3-2-1(a).

Indiana Code 6-3-1-12 defines "resident" in part as,

(a) any individual who was domiciled in this state during the taxable year

The taxpayer states that she and her husband have a history of working and living in different

states from each other, due to the demands of their separate professional careers. Taxpayer argues that it is true that her *husband* maintained an Indiana home, but that that she did not and that in fact she maintained a home in Chicago. To that end the taxpayer has submitted to the Department a copy of a fax cover letter from the rental agent to her, dated September 9, 1997, outlining that she would be renting a studio apartment, a copy of the lessee information fact sheet, an introductory welcome letter from the lessor to the lessee, and a move in/move out form. The “move in/move out” form indicates that the taxpayer would move in September 28, 1997, and move out an “anticipated” date of September 30, 1998.

In correspondence with the Department over this issue, the taxpayer stated the following:

You [the Department] are also aware that [the taxpayer] did not deduct any commuting expenses as her “tax home” was Chicago, Illinois. ...

The balance of the documents you request appear to be to determine if [the taxpayer’s] legal residence was outside of the State of Indiana. Our position is not that [the taxpayer] was a resident of Illinois, rather, our position is that [taxpayer’s] tax home clearly was Chicago, Illinois.

Leaving aside what “tax home” means (it is not from the Indiana Code), the issue then can be narrowed down to domicile.

The Indiana Administrative Code, 45 IAC 3.1-1-22, notes that the definition of domicile is fact sensitive:

The determination of a person’s intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person’s intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

The Department has asked for various documents that would serve as *indicia* of the taxpayer’s residency—resident income tax returns for Illinois, vehicle registration, driver’s license, etc.

Other than a copy of the rental information, the taxpayer has not provided the Department any documentation (even the fact that the taxpayer voted in Chicago is merely asserted, nothing was submitted to prove that statement). From the taxpayer's statements the Department has gleaned that the taxpayer "did have an Indiana driver's license and a car garaged in Indiana. The car was licensed in Indiana"

Since a home was maintained in a specific Indiana county, IC 6-3.5-1.1-16(a)(1) was correctly applied to the taxpayer:

- (a) For the purpose of this chapter, an individual shall be treated as a resident of the county in which he:
 - (1) maintains a home if the individual maintains only one (1) in Indiana;

Finally, in an early letter to the Department the taxpayer mentions that the penalty and interest should be "eliminated" too. Interest cannot be waived, by statute (IC 6-8.1-10-1(e)), and the taxpayer, who bears the burden of "proving the proposed assessment is wrong" under IC 6-8.1-5-1(b), has not made any arguments on the issue of the penalty.

FINDING

The taxpayer's protest is denied.